

Item SP03-18 Response Form

Title **Revision of Appellate Rules: Fourth Installment** (repeal Cal. Rules of Court, rules 39, 39.1, 39.1A, 39.1B, 39.2, 39.2A, 39.4, 39.8, 49, 49.5, 50, 56, 56.4, 56.5, 57, 58, 59, 60; adopt revised rules 37, 37.1, 37.2, 37.3, 38, 38.1, 38.2, 38.3, 38.4, 8.5, 38.6, 39, 39.1, 39.2, 49, 49.5, 56, 57, 58, 59, 60).

☐ **Agree** with proposed changes

☐ **Agree** with proposed changes **only if modified**

☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 P.M Friday, January 23, 2004.

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

Circulation for comment does not imply endorsement by the Judicial Council or the Rules and Projects Committee. All comments will become part of the public record of the council's action.

Title	Revision of Appellate Rules: Fourth Installment (repeal Cal. Rules of Court, rules 39, 39.1, 39.1A, 39.1B, 39.2, 39.2A, 39.4, 39.8, 49, 49.5, 50, 56, 56.4, 56.5, 57, 58, 59, 60; adopt revised rules 37, 37.1, 37.2, 37.3, 38, 38.1, 38.2, 38.3, 38.4, 38.5, 38.6, 39, 39.1, 39.2, 49, 49.5, 56, 57, 58, 59, 60).
Summary	This proposed revision of portions of the California Rules of Court covers rules governing appeals and writs in juvenile cases; appeals in conservatorship and sterilization cases; appeals and writs in habeas corpus cases; petitions for supersedeas or temporary stay; and petitions for extraordinary writ and other original proceedings. It is intended to clarify the meaning of the rules and facilitate their use by practitioners, parties, and court personnel.
Source	Appellate Advisory Committee Justice Joyce L. Kennard, Chair
Staff	Peter Belton, Chair, Appellate Rules Project Task Force 415-865-7094 peter.belton@jud.ca.gov Heather Anderson, Committee Counsel 415-865-7691 heather.anderson@jud.ca.gov
Discussion	<p>Under the direction of the Appellate Advisory Committee, the Appellate Rules Project Task Force—consisting of appellate practitioners, judicial staff attorneys, the Reporter of Decisions, and an associate justice of the Supreme Court—is developing proposals for revising the appellate rules of the California Rules of Court in a series of installments. The first installment (revised rules 1–18) was adopted by the Judicial Council and took effect on January 1, 2002. The second installment (revised rules 19–29.9, new rules 36.1, 36.2, and 47.1, and amended rules 5, 13, and 40) was adopted by the Judicial Council and took effect on January 1, 2003. The third installment (revised rules 30–36.3, amended rules 36.1, 36.2) was adopted by the Judicial Council and will take effect on January 1, 2004.</p> <p>The Appellate Advisory Committee now invites public comment on the fourth installment, attached to this report. It consists of revised rules 37–38.6, 39–39.2, 49, 49.5, and 56–60, and covers rules governing appeals and writs in juvenile cases; appeals in conservatorship and sterilization cases; appeals and writs in habeas</p>

corpus cases; petitions for supersedeas or temporary stay; and petitions for extraordinary writ and other original proceedings.

The main goals of this project are to clarify the meaning of the rules and facilitate their use by practitioners, parties, and court personnel by:

- Simplifying wording;
- Resolving ambiguities;
- Eliminating redundant and obsolete provisions;
- Conforming older rules to current practice;
- Removing inconsistencies in style and terminology;
- Restructuring individual rules into subdivisions to promote readability and understanding;
- Rearranging the sequence of subdivisions and rules as logic dictates;
- Making substantive changes when necessary to fill gaps in rule coverage, to conform to current practice, or to improve the appellate process;
- Identifying substantive and structural changes to the rules through explanatory Advisory Committee Comments (which will be published with the rules); and
- Recommending format and style guidelines.

A breakdown of the rules covered in this installment follows.

Appeals and writs in juvenile cases

Proposed rules 37, 37.1, 37.2, 37.3, 38, 38.1, 38.2, 38.3, 38.4, 38.5, and 38.6 would restate in revised form the rules governing appeals and writs in juvenile cases (current rules 39–39.2A). The current rules would be substantially restructured, but few substantive changes are proposed.

The most evident change is that under this revision the rules governing appeals and writs in juvenile cases would be wholly self-contained. Current rule 39(a) provides that the rules governing appeals from the superior court in criminal cases (now revised rules 30-33.3) govern appeals and writs in juvenile cases “except where the application of a particular rule would be clearly impracticable or inappropriate.” This rule structure is cumbersome to use and can result in uncertainty as to whether a particular rule of criminal appeals does or does not apply in appeals in juvenile cases. The committee proposes to solve the problem in two ways.

First, many of the proposed juvenile rules would restate in full the corresponding provisions of the criminal rules. (E.g., revised rule 37(c), (e)–(f).) Second, to avoid undue repetition of lengthy provisions that apply to both types of cases, several of the proposed juvenile rules would incorporate by reference specific rules or subdivisions of the relevant criminal rules (or when relevant, civil rules). (E.g., revised rule 37.1(c)(2), (d)–(f).) Please note, however, that a revised version of the criminal appellate rules has been adopted by the Judicial Council and will take effect on January 1, 2004. They may be viewed at the following Web site:

www.courtinfo.ca.gov/rules/amendments/jan2004.pdf

Several substantive changes are proposed in the rules governing appeals and writs in juvenile cases. The two most significant are noted below.

First, current rule 39 omits to provide for briefs by minors represented by counsel or for replies to such briefs; current rule 39.1A(g) provides for a minor’s brief in an appeal from a judgment terminating parental rights but does not provide for a reply to the minor’s brief, and effectively excludes the latter by requiring the appellant’s reply brief to be served and filed at the same time as the minor’s brief. These provisions often require the reviewing courts to extend time in cases in which they appoint counsel for the minor, resulting in different filing requirements for such briefs in different reviewing courts. In a substantive change intended to remedy these omissions, revised rule 37.3(b) would provide in paragraph (4)(A) that a minor who is not the appellant but has appellate counsel must file any brief within 20 days after the respondent’s brief is filed, and would provide in paragraph (4)(B) that the appellant must serve and file any reply to the minor’s brief within 20 days thereafter.

Second, current rule 39.1B(f) declares that if a party is notified of the order setting the hearing only by mail, the time to file a notice of intent to seek writ review is extended by five days, for a total of 12 days, from the date of the order setting the hearing. Revised rule 38(e)(5) would instead extend the filing period by five days from the date *the notification was mailed*. The purpose of this substantive change is to ensure that if mailing of the notification is delayed the party still has adequate time to prepare and file any notice of intent.

For purposes of clarity and ease of use, the proposal would divide

current rule 39.1B into two rules, revised rules 38 and 38.1. It is regretted that current rule 39.1B will thus lose its familiar designation, but renumbering is an unavoidable consequence of the rules revision project: virtually all the rules in the first three installments have had to be renumbered. Moreover, it is believed that the benefits of the reorganization of current rule 39.1B and its division into two more manageable rules will outweigh any perceived negative effects of its renumbering.

Petitions for extraordinary writ and other original proceedings

Proposed rules 56–59 would restate in revised form the rules governing petitions for extraordinary writ and other original proceedings (existing rules 56–59).

Several substantive changes are proposed in rule 56, governing petitions to the reviewing court for writs of mandate, certiorari, or prohibition, or other writs within the court’s original jurisdiction.

First, under current rule 56, parties seek from time to time to obtain writ relief by the device of filing a brief “joinder” purporting to join in a writ petition filed—or not yet filed but expected to be filed—by another party. Although the current rule does not expressly prohibit the practice, some reviewing courts reject such “joinders” because they evade the formal requirements for writ relief prescribed by current rule 56(a), including the requirement that the petition be verified. Revised rule 56(b)(6) would expressly prohibit the practice.

Second, current rule 56 does not expressly authorize petitioners to reply to preliminary oppositions to writ petitions, but the reviewing courts often permit such replies. In a substantive change intended to formalize this practice, revised rule 56(g)(3) would provide that a petitioner may serve and file a reply within five days after an opposition is filed. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may act on the petition without waiting for a reply.

Third, current rule 56(f) requires the return to an alternative writ to be filed “at least five days before the date set for hearing.” Because “hearing” in this context means oral argument before the reviewing court, the provision raises administrative difficulties. For example, the five-day limit allows little or no time for the petitioner to reply to the return or for the court to prepare for oral argument. In a substantive change intended to alleviate those difficulties, revised rule 56(h)(2)

would require instead that the return or opposition be served and filed within 30 days after the court issues the alternative writ or order to show cause or notifies the parties that it is considering issuing a peremptory writ in the first instance. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may order otherwise.

Fourth, revised subdivision 56(h)(3) would formalize the common practice of permitting petitioners to file replies to returns to alternative writs, and would specify that such a reply must be served and filed within 15 days after the return is filed. To permit prompt action in urgent cases, however, the provision would recognize that the reviewing court may order otherwise.

Finally, revised rule 56(g)–(h) would add several provisions recognizing the power of a reviewing court to issue a peremptory writ in the first instance after notifying the parties that it is considering doing so. These provisions would implement the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171.

Substantive changes are also proposed in the method of calculating the time to file responsive pleadings and briefs under rules 57–59. Current rule 57, governing review of Workers’ Compensation cases, measures the time to file an answer (or reply) from the date that the petition (or answer) is *served*, but the actual date of service is not always clear. In a substantive change intended to assist the reviewing courts, revised rule 57(b) would instead measure the time to file an answer (or reply) from the date that the petition (or answer) is *filed*. In each case the revised rule would allow five extra days for mailing. A similar change is proposed in current rules 58 and 59.

Other rules affected by this revision

Proposed rules 39 and 39.1 would restate in revised form the rules governing appeals in conservatorship and sterilization cases (existing rules 39.4 and 39.8). There are no substantive changes.

Proposed rules 39.2 and 60 would restate in revised form the rules governing appeals in habeas corpus cases and petitions for the writ of habeas corpus (existing rules 50, 56.5, and 60). Revised rule 60(a)–(d) would combine the provisions of current rules 56.5 and 60; revised rule 60(e) would restate in rule form the provisions of section 6.5 of the Standards of Judicial Administration.

Proposed rules 49 and 49.5 would restate in revised form the rules governing petitions for the writ of supersedeas and for temporary stay (existing rules 49 and 49.5). When a petition for original writ, petition for review, or other document requests a temporary stay from a reviewing court, current rule 49.5 requires only that the cover of the document prominently display the notice “Stay Requested.” In a substantive change intended to assist the reviewing courts in processing stay requests expeditiously, revised rule 49.5(a)–(b) would add three further requirements: the cover must identify the nature and date of the proceeding or act sought to be stayed, and either the cover or the text must identify the trial court and department involved and give the name and telephone number of the trial judge whose order the request seeks to stay.

Advisory Committee Comments

Because of the extensive revisions and restructuring of these proposed rules, specific changes are *not* indicated by the usual underscoring and ~~striking through~~ of the text. Instead, please refer to the proposed

Advisory Committee Comment that follows each rule, which explains the source of its provisions and any substantive change in the rule.

Although most of the proposed revisions are either stylistic or structural, any substantive changes are identified and explained in the comments. If a change is not specifically discussed, it should be presumed that the change is not intended to be substantive. The Advisory Committee Comments are proposed for adoption by the council as official interpretive history, and for inclusion in all published versions of the revised rules. Because the Advisory Committee Comments contemplate adoption of the revised rules, the comments refer to the current rules as “former” rules and to the proposed rules as “revised” rules.

1 Attachments

2

Rules 39, 39.1, 39.1A, 39.1B, 39.2, 39.2A, 39.4, 39.8, 49, 49.5, 50, 56, 56.4, 56.5, 57, 58, 59, and 60 would be repealed, and revised rules 37, 37.1, 37.2, 37.3, 38, 38.1, 38.2, 38.3, 38.4, 38.5, 38.6, 39, 39.1, 39.2, 49, 49.5, 56, 57, 58, 59, and 60 would be adopted, effective July 1, 2004, to read:

PART VIII. Appeals and Writs in Juvenile Cases

Rule 37. Appeals in juvenile cases generally

(a) Application

Rules 37–38.5 govern appeals from judgments or appealable orders in juvenile cases under the Welfare and Institutions Code and in actions to free a minor from parental custody and control under Family Code section 7800 et seq. These rules do not apply to an appeal from an order—or from a denial of an application for rehearing of an order—by a juvenile hearing officer under Welfare and Institutions Code section 258.

(b) Confidentiality

In an appeal in a juvenile dependency case or an action under Family Code section 7800:

- (1) the record on appeal and the briefs may be inspected only by reviewing court personnel, the parties or their attorneys, and other persons the court designates;
- (2) the briefs, other documents filed by the parties, and court orders or opinions must protect the anonymity of the parties; and
- (3) the court may limit or prohibit public admission to oral argument.

(c) Notice of appeal

- (1) To appeal from a judgment or appealable order under these rules the appellant must serve and file a notice of appeal in the superior court. The appellant or the appellant’s attorney must sign the notice.
- (2) The notice of appeal must be liberally construed, and is sufficient if it identifies the particular judgment or order being appealed. The notice need not specify the court to which the appeal is taken; the appeal will be

1 treated as taken to the Court of Appeal for the district in which the
2 superior court is located.

- 3
4 (3) Failure to serve the notice of appeal neither prevents its filing nor affects
5 its validity, but the appellant may be required to remedy the failure.
6

7 **(d) Time to appeal**
8

- 9 (1) Except as provided in (2) and (3), a notice of appeal must be filed within
10 60 days after the rendition of the judgment or the making of the order
11 being appealed.
12
13 (2) In matters heard by a referee not acting as a temporary judge, a notice of
14 appeal must be filed within 60 days after the referee's order becomes final
15 under rule 1417(c).
16
17 (3) When an application for rehearing of an order of a referee not acting as a
18 temporary judge is denied under rule 1418, a notice of appeal from the
19 referee's order must be filed within the later of 60 days after that order is
20 served under rule 1416(b)(3) or 30 days after entry of the order denying
21 rehearing.
22

23 **(e) Premature or late notice of appeal**
24

- 25 (1) A notice of appeal filed before the judgment is rendered or the order is
26 made is premature, but the reviewing court may treat the notice as filed
27 immediately after the rendition of judgment or the making of the order.
28
29 (2) The superior court clerk must mark a late notice of appeal "Received
30 [date] but not filed" and notify the party that the notice was not filed
31 because it was late. In juvenile delinquency cases, the clerk must also
32 send a copy of the marked notice of appeal to the district appellate
33 project.
34

35 **(f) Superior court clerk's duties**
36

- 37 (1) When a notice of appeal is filed, the clerk must immediately:
38
39 (A) mail a notification of the filing to each party other than the
40 appellant, to all attorneys of record, and to the reviewing court clerk,
41 and
42

1 (B) notify the reporter by telephone and in writing to prepare a reporter's
2 transcript and deliver it to the clerk within 20 days after the notice of
3 appeal is filed.
4

5 (2) In a juvenile dependency case the clerk must also immediately mail a
6 notification of the filing to any de facto parent, any court-appointed
7 special advocate, and the tribe of an Indian child.
8

9 (3) The notification must show the date it was mailed, the number and title of
10 the case, and the date the notice of appeal was filed. If the information is
11 available, the notification must also include:
12

13 (A) the name, address, telephone number, and California State Bar
14 number of each attorney of record in the case;
15

16 (B) the name of the party each attorney represented in the trial court; and
17

18 (C) the name, address, and telephone number of any unrepresented
19 party.
20

21 (4) The notification to the reviewing court clerk must also include a copy of
22 the notice of appeal and any sequential list of reporters made under rule
23 980.4.
24

25 (5) A copy of the notice of appeal is sufficient notification if the required
26 information is on the copy or is added by the superior court clerk.
27

28 (6) The mailing of a notification is a sufficient performance of the clerk's
29 duty despite the discharge, disqualification, suspension, disbarment, or
30 death of the attorney.
31

32 (7) Failure to comply with any provision of this subdivision does not affect
33 the validity of the notice of appeal.
34

35 **Advisory Committee Comment**

36 Revised rule 37 principally restates subdivisions (a)–(b) and (e)–(g) of former rule 39.
37

38 **Subdivision (b).** Revised rule 37(b) is former rule 39(f)–(g).
39

40 **Subdivision (c).** Revised rule 37(c) is derived from revised rule 30(a) [existing rule 31(a)–(b)].
41
42
43

1 **Subdivision (e).** Revised rule 37(e) is derived from revised rule 30.1(b)–(c) [existing rule 31(a)].
2 The second sentence of revised rule 37(e)(2), however, applies only to late notices of appeal filed in
3 juvenile delinquency cases under Welfare and Institutions Code sections 600 et seq. The constructive
4 filing doctrine does not apply in juvenile dependency cases. (*In re Alyssa H.* (1994) 22 Cal.App.4th
5 1249, 1253–1254 [termination of parental rights]; *but see In re Jacqueline P.* (2003) 112 Cal.App.4th 141
6 [petition for review filed 10/6/03]).

7
8 **Subdivision (f).** The requirement of revised rule 37(f)(1) that the superior court clerk notify the
9 reviewing court and the reporter of the filing of the notice of appeal is derived from revised rule 30(c)(1)
10 [existing rule 31(c)]. The requirement of revised rule 37(f)(1)(B) that the clerk notify the reporter not
11 only in writing but also by telephone is derived from former rule 39.1A(c) (now revised rule 38(e)(1)). It
12 implements the Legislature’s intent that appeals in dependency and delinquency cases be treated
13 expeditiously. (See, e.g., Welf. & Inst. Code, §§ 395, 800 [such appeals must be given precedence “over
14 all other cases”].)

15
16 Revised rule 37(f)(3)–(7) is derived from revised rule 30(c)(2)–(6) [existing rule 1(d)(2)–(6)].
17

18 **Former subdivision (e).** Former rule 39(e) is deleted as unnecessary; it restated existing
19 statutory provisions on precedence (Welf. & Inst. Code, §§ 395, 800) and was primarily directed to the
20 reviewing courts.
21

22 23 **Rule 37.1 Record on appeal** 24

25 **(a) Normal record: clerk’s transcript** 26

27 The clerk’s transcript must contain:
28

- 29 (1) the petition;
30
- 31 (2) any notice of hearing addressed to the minor, a parent, or a guardian;
32
- 33 (3) all court minutes;
34
- 35 (4) any report or other document submitted to the court;
36
- 37 (5) the jurisdictional findings;
38
- 39 (6) the judgment or order appealed from;
40
- 41 (7) any application for rehearing;
42
- 43 (8) the notice of appeal and any order pursuant to the notice; and
44
- 45 (9) any application for additional record and any order on the application.
46

1 **(b) Normal record: reporter's transcript**

2
3 The reporter's transcript must contain:

- 4
5 (1) except as provided in (2), the oral proceedings at any hearing that resulted
6 in the order or judgment being appealed;
7
8 (2) in appeals from dispositional orders, the oral proceedings at hearings on
9 jurisdiction and disposition;
10
11 (3) any oral arguments to the court except opening statements; and
12
13 (4) any oral opinion of the court.
14

15 **(c) Application in superior court for addition to normal record**

- 16
17 (1) Any party may apply to the superior court for inclusion in the record of
18 any of the following items:
19
20 (A) in the clerk's transcript: any written motions or notice of motion by
21 any party, with supporting and opposing memoranda and
22 attachments, and any written opinion of the court; and
23
24 (B) in the reporter's transcript: the oral proceedings on any prehearing
25 motions and any opening statement.
26
27 (2) The application and order are governed by rule 31.1(c)–(d).
28

29 **(d) Agreed or settled statement**

30
31 To proceed by agreed or settled statement, the parties must comply with rules
32 32.2 or 32.3.
33

34 **(e) Form of record**

35
36 The clerk's and reporter's transcripts must comply with rule 9.
37

38 **(f) Transmitting exhibits**

39
40 Exhibits that were admitted in evidence, refused, or lodged, may be transmitted
41 to the reviewing court as provided in rule 18.
42

43 **Advisory Committee Comment**

Revised rule 37.1 principally restates former rule 39(c)–(d).

Subdivision (a). Revised rule 37.1(a)(4) combines and simplifies the provisions of former rule 39.1A(c)(4)–(5). Under the former rules, the required components of the clerk’s transcript in an appeal from an order terminating parental rights differed from the required components of the clerk’s transcript in every other juvenile appeal; revised rule 37.1(a)(4) requires that the same clerk’s transcript be prepared in all juvenile appeals. This substantive change is intended to eliminate any possible confusion or delays caused by the inconsistent record requirements of the former rules.

Revised rule 37.1(a)(9) is derived from revised rule 31(b)(12) [existing rule 33(a)(1)(a)].

Subdivision (b). Former rule 39(c)(2) required that the normal record include reporter’s transcripts of all hearings in a juvenile case except the detention hearing, regardless of which order was being appealed. Former rule 39.1A(c)(1), however, provided that in appeals from orders terminating parental rights the normal record must include reporter’s transcripts of only those portions of the hearing from which the appeal is taken. Revised rule 37.1(b)(1) essentially adopts the position of former rule 39.1A(c)(1) and establishes the general rule that only the reporter’s transcript of a hearing that resulted in the order being appealed must be included in the normal record. This substantive change is intended to achieve consistent record requirements in all juvenile appeals and to reduce the delays and expense caused by the need to transcribe proceedings not necessary to the appeal.

Revised rule 37.1(b)(2) recognizes that findings made in a jurisdictional hearing are not separately appealable and can be challenged only in an appeal from the ensuing dispositional order. The revised rule therefore specifically provides that a reporter’s transcript of jurisdictional proceedings must be included in the normal record on appeal from a dispositional order.

Subdivisions (d) and (e). Revised 37.1(d)–(e) fills gaps consistently with practice.

Subdivision (f). Revised rule 37.1(f) restates provisions of former rule 39(c)(3) and (d)(3); it is derived from revised rule 33.1.

Rule 37. 2 Preparing, sending, and augmenting the record

(a) Preparing and certifying the transcripts

Within 20 days after the notice of appeal is filed:

- (1) the clerk must prepare and certify as correct an original and sufficient copies of the clerk’s transcript to comply with (c); and
- (2) the reporter must prepare, certify as correct, and deliver to the clerk an original and the same number of copies of the reporter’s transcript as (1) requires of the clerk’s transcript.

(b) Extension of time

- 1 (1) The trial court may not extend the time to prepare the record.
2
3 (2) The reviewing court may order one or more extensions of time, not
4 exceeding a total of 60 days, on receipt of:
5
6 (A) an affidavit showing good cause, and
7
8 (B) in the case of a reporter's transcript, certification by the superior
9 court presiding judge, or a court administrator designated by the
10 presiding judge, that an extension is reasonable and necessary in
11 light of the workload of all reporters in the court.
12

13 **(c) Sending the transcripts**

- 14
15 (1) When the transcripts are certified as correct, the clerk must immediately
16 send:
17
18 (A) the original transcripts to the reviewing court, noting the sending
19 date on each original, and
20
21 (B) one copy of each transcript to the attorneys of record for the
22 appellant, the respondent, and the minor.
23
24 (2) If appellate counsel has not yet been retained or appointed when the
25 transcripts are certified as correct, the clerk must send that counsel's copy
26 of the transcripts to the district appellate project.
27
28 (3) The clerk must not send a copy of the transcripts to the Attorney General
29 or the district attorney unless that office represents a party.
30

31 **(d) Augmenting or correcting the record in the reviewing court**

- 32
33 (1) Rule 32.1(a)–(b) governs augmentation of the record without court order.
34
35 (2) On request of a party or on its own motion, the reviewing court may also
36 order the record augmented or corrected as provided in rule 12(a) and (c).
37
38
39

Advisory Committee Comment

40 New rule 37.2 fills a number of gaps. It is derived from former rule 39.1A and the rules
41 governing appeals from the superior court in criminal cases (revised rules 30-33.2 [existing rules 31-38]).
42

1 **Subdivision (a).** New rule 37.2(a) requires the record to be prepared within 20 days after the
2 notice of appeal is filed. The requirement is based on former rule 39.1A(c).
3

4 **Subdivision (b).** As provided in criminal appeals by revised rule 32(e)(2) [existing rule 35(d)],
5 new rule 37.2(b) limits extensions of time to prepare the record to a total of 60 days and, to support an
6 order of the reviewing court extending the time to prepare a reporter's transcript, requires that the superior
7 court presiding judge or court administrator certify that the extension is reasonable and necessary in light
8 of the workload of all reporters in the court.
9

10 **Subdivision (c).** As provided in criminal appeals by revised rule 32(f)(2), new rule 37.2(c)(1)(A)
11 requires the clerk to note, on the original of the clerk's and reporter's transcripts, the date they were sent
12 to the reviewing court.
13

14 New rule 37.2(c)(2) fills a gap and reflects current practice (see also revised rules 31.2(a)(3)(B)
15 and 32(f)(2)).
16

17 New rule 37.2(c)(3) is former rule 39.1(c).
18

19 **Subdivision (d).** New rule 37.2(d) is derived from revised rule 32.1 and former rule 39.1A(d).
20
21

22 **Rule 37.3 Briefs**

23

24 **(a) Contents, form, and length**

25

26 Rule 33(a)–(b) governs the contents, form, and length of briefs.
27

28 **(b) Time to file**

29

30 (1) The appellant must serve and file the appellant's opening brief within 40
31 days after the record is filed in the reviewing court.
32

33 (2) The respondent must serve and file the respondent's brief within 30 days
34 after the appellant's opening brief is filed.
35

36 (3) The appellant must serve and file any reply brief within 20 days after the
37 respondent's brief is filed.
38

39 (4) In dependency cases in which the minor is not an appellant but has
40 appellate counsel:
41

42 (A) the minor must serve and file any brief within 20 days after the
43 respondent's brief is filed, and
44

45 (B) the appellant must serve and file any reply brief within 20 days after
46 the minor's brief is filed.

- 1
2 (5) Rule 17 applies if a party fails to timely file an appellant's opening brief
3 or a respondent's brief, but the period specified in the notice required by
4 that rule must be 30 days.
5

6 **(c) Extensions of time**
7

8 The superior court may not order any extensions of time to file briefs; the
9 reviewing court may order extensions of time for good cause.
10

11 **(d) Additional service requirements**
12

- 13 (1) A copy of each brief must be served on the superior court clerk for
14 delivery to the superior court judge.
15
16 (2) If the Court of Appeal has appointed counsel for any party, the county
17 child welfare department must serve two copies of its briefs on that
18 counsel and one copy on the district appellate project.
19
20 (3) The parties must not serve copies of their briefs:
21
22 (A) on the Attorney General or the district attorney unless that office
23 represents a party; or
24
25 (B) on the Supreme Court under rule 44(b)(2)(ii).
26
27

28 **Advisory Committee Comment**
29

30 New rule 37.3 fills a gap. It is derived from former rule 39.1A(g) and the rules governing appeals
31 from the superior court in criminal cases (revised rules 30-33.2 [existing rules 31-38]).
32

33 **Subdivision (b).** Former rule 39 did not provide for briefs by minors represented by counsel or
34 for replies to such briefs; former rule 39.1A(g) provided for a minor's brief in an appeal from a judgment
35 terminating parental rights but omitted to provide for a reply to the minor's brief, and effectively excluded
36 the latter by requiring the appellant's reply brief to be served and filed at the same time as the minor's
37 brief. These provisions often required the reviewing courts to extend time in cases in which they
38 appointed counsel for the minor, resulting in different filing requirements for such briefs in different
39 reviewing courts. In a substantive change intended to remedy these omissions, revised rule 37.3(b)
40 provides in paragraph (4)(A) that a minor who is not the appellant but has appellate counsel must file any
41 brief within 20 days after the respondent's brief is filed, and provides in paragraph (4)(B) that the
42 appellant must serve and file any reply to the minor's brief within 20 days thereafter.
43

44 **Subdivision (d).** Revised rule 37.3(d)(2) is an amendment to former rule 39.1 that will take
45 effect on January 1, 2004. It is inserted here for completeness.

Revised rule 37.3(d)(3) is derived from former rule 39.1(d)–(e).

Rule 38. Notice of intent to file writ petition to review order setting hearing under Welfare and Institutions Code section 366.26

(a) Application

Rules 38–38.1 govern writ petitions to review orders setting a hearing under Welfare and Institutions Code section 366.26. Rule 56 does not apply to petitions governed by these rules.

(b) Purpose

Rules 38–38.1 are intended to encourage and assist the reviewing courts to determine on their merits all writ petitions filed under these rules within the periods specified for holding a hearing under Welfare and Institutions Code section 366.26 by sections 361.5, 366.21, and 366.22 of that code.

(c) Who may file

The petitioner’s trial counsel or, in the absence of trial counsel, the petitioner, is responsible for filing any notice of intent and writ petition under rules 38–38.1. Trial counsel is encouraged to seek assistance from, or consult with, attorneys experienced in writ procedure.

(d) Extensions of time

The superior court may not order an extension of any time limit prescribed by rules 38–38.1; the reviewing court may order extensions of time, but must require an exceptional showing of good cause.

(e) Notice of intent

- (1) A party seeking writ review under rules 38–38.1 must serve and file a notice of intent to file a writ petition and a request for the record.
- (2) The notice must include all known dates of the hearing that resulted in the order under review.
- (3) The notice must be signed by the party intending to file the petition or, if filed on behalf of the minor, by the attorney of record for the minor. The

1 reviewing court may waive this requirement for good cause based on a
2 declaration by the attorney of record explaining why the party could not
3 sign the notice.
4

5 (4) The notice must be served and filed within seven days after the date of the
6 order setting the hearing or, if the order was made by a referee not acting
7 as a temporary judge, within seven days after the referee's order becomes
8 final under rule 1417(c). The date of the order setting the hearing is the
9 date on which the court states the order on the record orally or in writing,
10 whichever first occurs.
11

12 (5) If the party was notified of the order setting the hearing only by mail, the
13 notice must be served within five days after the date that the clerk mailed
14 the notice or within the time specified by (4), whichever is later.
15

16 **(f) Sending the notice of intent**
17

18 (1) When the notice of intent is filed, the superior court clerk must
19 immediately mail a copy of the notice to:
20

21 (A) each counsel of record;
22

23 (B) each party, including the minor, the parent, the present custodian of
24 a dependent child, any legal guardian, and any person who has been
25 declared a de facto parent and given standing to participate in the
26 juvenile court proceedings;
27

28 (C) the probation officer or social worker; and
29

30 (D) any court-appointed child advocate.
31

32 (2) The clerk must promptly send a copy of the notice and a proof of service
33 list to the reviewing court, by first-class mail or fax.
34

35 **(g) Record**
36

37 When the notice of intent is filed, the clerk must immediately:
38

39 (1) notify the reporter by telephone and in writing to prepare a reporter's
40 transcript of the oral proceedings at the hearing that resulted in the order
41 under review and deliver it to the clerk within 12 days after the notice of
42 intent is filed; and
43

- 1 (2) prepare a clerk's transcript that includes the notice of intent, proof of
2 mailing, and all relevant items listed in rule 37.1(a).
3

4 **(h) Sending the record**
5

6 When the transcripts are certified as correct, the clerk must immediately send:
7

- 8 (1) the original transcripts by the most expeditious method to the reviewing
9 court, noting the sending date on each original, and
10
11 (2) one copy of each transcript to each counsel of record and any
12 unrepresented party by any means as fast as United States Postal Service
13 express mail.
14

15 **(i) Reviewing court clerk's duties**
16

- 17 (1) The reviewing court clerk must promptly lodge the notice of intent.
18 When the notice is lodged, the reviewing court has jurisdiction of the writ
19 proceedings.
20
21 (2) The reviewing court clerk must promptly notify the parties when the
22 record is filed in that court, stating the date on which the 10-day period
23 for filing the writ petition under rule 38.1(c)(1) will expire.
24
25

26 **Advisory Committee Comment**
27

28 Revised rule 38 restates those portions of former rule 39.1B that provided for a *notice of intent* to
29 file a writ petition to review an order setting a hearing under Welfare and Institutions Code section
30 366.26. The portions of the former rule that provided for the petition itself are restated in revised rule
31 38.1.
32

33 **Subdivision (d).** Revised rule 38(d) is new. The case law generally recognizes that the
34 reviewing courts may grant extensions of time under these rules for exceptional good cause. The
35 provision is derived from revised rule 38.2(f) [existing rule 39.1A(i)].
36

37 **Subdivision (e).** Former rule 39.1B(f) declared that if a party was notified of the order setting the
38 hearing only by mail, the time to file a notice of intent to seek writ review was extended by five days, for
39 a total of 12 days, from the date of the order setting the hearing. Revised rule 38(e)(5) instead extends the
40 filing period by five days from the date *the notification was mailed*. The purpose of this substantive
41 change is to ensure that if mailing of the notification is delayed the party still has adequate time to prepare
42 and file any notice of intent.
43

44 **Subdivision (g).** In the interest of completeness, revised rule 38(g)(2) specifies that the clerk's
45 transcript must include, in addition to all relevant items listed in revised rule 37.1(a), the notice of intent
46 and the proof of service of that notice.

1
2 **Former rule 39.1B(d)-(e).** Former rule 39.1B(d)–(e) are deleted because they expressly or in
3 effect duplicated provisions of Welfare and Institutions Code section 366.26, subdivision (l). No
4 substantive change is intended.
5

6
7 **Rule 38.1 Writ petition to review order setting hearing under Welfare and**
8 **Institutions Code section 366.26**
9

10 **(a) Petition**
11

12 (1) The petition must include:

13 (A) the identity of the parties;

14 (B) the date on which the superior court made the order setting the
15 hearing;

16 (C) the date on which the hearing is scheduled to be held;

17 (D) a summary of the grounds of the petition; and
18

19 (E) the relief requested.
20

21 (2) The petition must be liberally construed.
22

23 (3) The petition must be accompanied by points and authorities.
24

25 **(b) Contents of points and authorities**
26

27 (1) The points and authorities must provide a summary of the significant
28 facts, limited to matters in the record.

29 (2) The points and authorities must state each point under a separate heading
30 or subheading summarizing the point, and support each point by
31 argument and citation of authority.
32

33 (3) The points and authorities must support any reference to a matter in the
34 record by a citation to the record. The points and authorities should
35 explain the significance of any cited portion of the record and note any
36 disputed aspects of the record.
37

38 **(c) Time to file petition and response**
39
40
41
42
43

- 1
2 (1) The petition must be served and filed within 10 days after the record is
3 filed in the reviewing court.
4
5 (2) Any response must be served and filed:
6
7 (A) within 10 days after the petition is filed;
8
9 (B) if the petition was served by mail, within 15 days after the petition is
10 filed; or
11
12 (C) within 10 days after receiving a request for a response by the
13 reviewing court, unless the court specifies a shorter time.
14

15 **(d) Order to show cause or alternative writ**
16

17 If the court intends to determine the petition on the merits, it should issue an
18 order to show cause or alternative writ.
19

20 **(e) Augmenting or correcting the record in the reviewing court**
21

- 22 (1) Except as provided in (2) and (3), rule 37.2(d) governs augmentation or
23 correction of the record.
24
25 (2) The petitioner must serve and file any request for augmentation or
26 correction within five days after receiving the record; a respondent must
27 serve and file any such request within five days after the petition is filed.
28
29 (3) An order augmenting or correcting the record may grant no more than 15
30 days for compliance. The clerk and the reporter must give the order the
31 highest priority.
32
33 (4) The clerk must certify and send any supplemental transcripts as required
34 by rule 38(g).
35

36 **(f) Stay**
37

38 The reviewing court may stay the hearing set under Welfare and Institutions
39 Code section 366.26, but must require an exceptional showing of good cause.
40

41 **(h) Oral argument**
42

1 (1) The reviewing court must hear oral argument within 30 days after the
2 response is filed or due to be filed, unless the court extends the time for
3 good cause or counsel waive argument.
4

5 (2) If argument is waived, the cause is deemed submitted not later than 30
6 days after the response is filed or due to be filed.
7

8 **(i) Decision**
9

10 (1) Absent exceptional circumstances, the reviewing court should review the
11 petition and decide it on the merits by written opinion.
12

13 (2) The reviewing court clerk must promptly notify the parties of any
14 decision and must promptly send a certified copy of any writ or order to
15 the court named as respondent.
16

17 (3) If the writ or order stays or prohibits proceedings set to occur within
18 seven days or requires action within seven days—or in any other urgent
19 situation—the reviewing court clerk must make a reasonable effort to
20 notify the clerk of the respondent court by telephone, who must then
21 notify the judge or officer most directly concerned.
22

23 (4) The reviewing court clerk need not give telephonic notice of the summary
24 denial of a writ, whether or not a stay previously issued.
25
26

27 **Advisory Committee Comment**
28

29 Revised rule 38.1 restates those portions of former rule 39.1B that provided for a writ petition to
30 review an order setting a hearing under Welfare and Institutions Code section 366.26. The portions of the
31 former rule that provided for the notice of intent to file the petition are restated in revised rule 38.

32 **Subdivision (a).** Revised rule 38.1(a)(1) is new. It fills a gap, setting out the essential elements
33 of a writ petition filed under this rule.

34 **Subdivision (b).** Revised rule 38.1(b) restates former rule 39.1B(j) but conforms it to the
35 requirements of case law and the relevant provisions of rule 14.

36 **Subdivision (e).** Revised rule 38.1(e)(4) fills a gap.

37 **Subdivision (f).** Revised rule 38.1(f) restates former rule 39.1B(p) but simplifies and broadens
38 its wording in order to permit a stay, for example, when the time remaining before the scheduled date of
39 the hearing under Welfare and Institutions Code section 366.26 is inadequate to permit proper review.
40 The wording of the provision is consistent with revised rules 38(d) and 38.2(f).
41
42

1 **Rule 38.2. Appeals from judgments or orders terminating parental rights**

2
3 **(a) Application**

4
5 This rule governs appeals from orders terminating parental rights under
6 Welfare and Institutions Code 366.26 or judgments freeing a minor from
7 parental custody and control under Family Code section 7800 et seq. In all
8 respects not provided for in this rule, rules 37–37.3 apply.
9

10 **(b) Cover of record**

11
12 The cover of the record must prominently display the title, “Appeal from
13 [Judgment or Order] Terminating Parental Rights under [Welfare and
14 Institutions Code section 366.26 or Family Code section 7800],” whichever is
15 appropriate.
16

17 **(c) Sending the record**

18
19 When the clerk’s and reporter’s transcripts are certified as correct, the clerk
20 must immediately send:

- 21
22 (1) the original transcripts by the most expeditious method to the reviewing
23 court, noting the sending date on each original; and
24
25 (2) one copy of each transcript to the attorneys of record for the appellant, the
26 respondent, and the minor, and to the district appellate project, by any
27 method as fast as United States Postal Service express mail.
28

29 **(d) Augmenting or correcting the record in the reviewing court**

- 30
31 (1) An appellant must serve and file any request for augmentation or
32 correction within 15 days after receiving the record; a respondent must
33 serve and file any such request within 15 days after the appellant’s
34 opening brief is filed.
35
36 (2) The clerk and the reporter must prepare any supplemental transcripts
37 within 20 days, giving them the highest priority.
38
39 (3) The clerk must certify and send any supplemental transcripts as required
40 by (c).
41

42 **(e) Time to file appellant’s opening brief**

1 To permit determination of the appeal within 250 days after the notice of
2 appeal is filed, the appellant must serve and file the appellant's opening brief
3 within 30 days after the record is filed in the reviewing court.
4

5 **(f) Extensions of time**
6

7 The trial court may not order any extensions of time to prepare the record or to
8 file briefs; the reviewing court may order extensions of time, but must require
9 an exceptional showing of good cause.
10

11 **(g) Oral argument**
12

13 (1) Unless the court orders a shorter time, counsel must serve and file any
14 request for oral argument no later than 15 days after the appellant's reply
15 brief is filed or due to be filed. Failure to file a timely request will be
16 deemed a waiver.
17

18 (2) The reviewing court must hear oral argument within 60 days after the
19 appellant's last reply brief is filed or due to be filed, unless the court
20 extends the time for good cause or counsel waive argument.
21

22 (3) If counsel waive argument, the cause is deemed submitted no later than
23 60 days after the appellant's reply brief is filed or due to be filed.
24

25
26 **Advisory Committee Comment**
27

28 Revised rule 38.3 restates former rule 39.1A but deletes all provisions of the former rule that
29 expressly or in effect duplicated revised rules 37–37.3. Former rule 39.1A(b) and (e) are deleted because
30 they expressly or in effect duplicated provisions of Welfare and Institutions Code section 366.26,
31 subdivision (l). No substantive change is intended.
32

33 **Subdivision (g).** Revised rule 38.2(g)(1) recognizes the practice of certain reviewing courts of
34 requiring counsel to file any request for oral argument in a shorter time period than 15 days after the
35 appellant's reply brief is filed or due to be filed. It is not a substantive change.
36
37

38 **Rule 38.3 Special rule for Orange, Imperial, and San Diego counties**
39

40 **(a) Application**
41

42 This rule governs appeals from judgments or appealable orders of the Superior
43 Courts of Orange, Imperial, and San Diego Counties in juvenile dependency
44 cases under Welfare and Institutions Code section 300 et seq. and in actions to

1 free a minor from parental custody and control under Family Code section
2 7800 et seq. In all respects not provided for in this rule, rules 37–37.3 apply.
3

4 **(b) Record on appeal**
5

6 (1) The cover of the record must prominently display the title, “Appeal from
7 [Judgment or Order] under [Welfare and Institutions Code section 300 or
8 Family Code section 7800],” whichever is appropriate.
9

10 (2) Rule 38.2(c) governs the clerk’s duties after the transcripts are certified as
11 correct.
12

13 **(c) Augmenting or correcting the record in the reviewing court**
14

15 Rule 38.2(d) governs augmentation or correction of the record.
16

17 **(d) Time to file briefs**
18

19 (1) Rule 38.2(e) governs the time to serve and file an appellant’s opening
20 brief. Rule 37.3(b)(2)–(3) governs the time to serve and file the
21 respondent’s brief and any appellant’s reply brief.
22

23 (2) The minor must serve and file any brief within 10 days after the
24 respondent’s brief is filed.
25

26 **(e) Extensions of time**
27

28 Rule 38.2(f) governs extensions of time.
29

30 **(f) Oral argument; submission**
31

32 Rule 38.2(g) governs the time to hear oral argument and submission.
33
34
35

Advisory Committee Comment

36 Revised rule 38.3 combines the provisions of former rules 39.2 and 39.2A but deletes all
37 provisions of the former rules that expressly or in effect duplicated revised rules 37–37.3.
38

39 **Subdivision (b).** Revised rule 38.3(b)(1) deletes as obsolete the requirement of former rules
40 39.2(c) and 39.2A(c) that the trial court clerk in certain counties “hand carry” the certified original
41 transcripts to the reviewing court.
42

1 **Subdivision (c).** In a partial substantive change, revised rule 38.3(c) tracks former rule 39.2A(d)
2 rather than former rule 39.2(d). The 15-day time limits prescribed by former rule 39.2A(d)—incorporated
3 by reference in the revised rule— better serve the intent of this rule to expedite the processing of juvenile
4 appeals in the counties to which it applies.
5

6 **Subdivision (d).** In a partial substantive change, revised rule 38.3(d)(2) tracks former rule
7 39.2A(f) rather than former rule 39.2(f). The shorter time limit to file a minor’s brief prescribed by
8 former rule 39.2A(f) better serves the intent of this rule to expedite the processing of juvenile appeals in
9 the counties to which it applies.
10

11 **Subdivision (f).** Revised rule 38.3(f) incorporates by reference the requirement of revised rule
12 38.2(g)(1) that counsel must serve and file any request for oral argument no later than 15 days after the
13 appellant’s reply brief is filed or due to be filed, unless the court orders a shorter time. The intent of this
14 substantive change is to coordinate this rule with revised rule 39.2, while allowing certain reviewing
15 courts to continue their practice of requiring counsel to act in a shorter time.
16
17

18 **Rule 38.4 Hearing and decision in the Court of Appeal** 19

20 Except as provided in rules 37–38.3, rules 21 through 27 govern the hearing and decision
21 in the Court of Appeal in appeals in juvenile cases.
22
23
24

25 **Advisory Committee Comment**

26 Rule 38.4 is new, but it is not a substantive change. It clarifies the applicability, to appeals in
27 juvenile cases, of the relevant rules governing the hearing and decision of civil appeals in the Court of
28 Appeal.
29

30 **Rule 38.5 Hearing and decision in the Supreme Court** 31

32 Rules 28 through 28.9 govern the hearing and decision in the Supreme Court of an appeal
33 in juvenile cases.
34
35

36 **Advisory Committee Comment**

37 Rule 38.5 is new, but it is not a substantive change. It clarifies the applicability, to appeals in
38 juvenile cases, of the rules governing the hearing and decision of civil appeals in the Supreme Court.
39

40 **Rule 38.6. Procedures and data** 41

42 **(a) Procedures** 43

1 The judges and clerks of the superior courts and the reviewing courts must
2 adopt procedures to identify the records and expedite the processing of all
3 appeals and writs in juvenile cases.
4

5 **(b) Data**
6

7 The clerks of the superior courts and the reviewing courts must provide data
8 required to assist the Judicial Council in evaluating the effectiveness of the
9 rules governing appeals and writs in juvenile cases.
10

11 **Advisory Committee Comment**
12

13 Revised rule 38.6 restates former rules 39.1A(f), 39.2(e), and 39.2A(e).
14
15

16 **PART IX. Miscellaneous Appellate Rules**
17

18 **Rule 39. Appeal from order establishing conservatorship**
19

20 **(a) Application**
21

22 Except as otherwise provided in this rule, rules 30–33.3 govern appeals from
23 orders establishing conservatorships under Welfare and Institutions Code
24 section 5350 et seq.
25

26 **(b) Clerk’s transcript**
27

28 The clerk’s transcript must contain the items listed in rule 31(b) and any report
29 or other document submitted to the court.
30

31 **(c) Reporter’s transcript**
32

33 The reporter’s transcript must contain the items listed in rule 31(c).
34

35 **(d) Sending the record**
36

37 The clerk must not send a copy of the record to the Attorney General or the
38 district attorney unless that office represents a party.
39

40 **(e) Briefs**
41

42 The parties must not serve copies of their briefs:

1
2 (A) on the Attorney General or the district attorney unless that office
3 represents a party, or
4

5 (B) on the Supreme Court under rule 44(b)(2)(ii).
6
7

8 **Advisory Committee Comment**

9 Revised rule 39 is former rule 39.4.
10
11

12 **Rule 39.1. Appeal from judgment authorizing conservator to consent to sterilization**
13 **of conservatee**
14

15 **(a) Application**
16

17 Except as otherwise provided in this rule, rules 30–33.3 govern appeals from
18 judgments authorizing a conservator to consent to the sterilization of a
19 developmentally disabled adult conservatee.
20

21 **(b) When appeal is taken automatically**
22

23 An appeal from a judgment authorizing a conservator to consent to the
24 sterilization of a developmentally disabled adult conservatee is taken
25 automatically, without any action by the conservatee, when the judgment is
26 rendered.
27

28 **(c) Clerk’s duties**
29

30 After entering the judgment the clerk must immediately:
31

32 (1) prepare a clerk’s transcript and notify the reporter to prepare a reporter’s
33 transcript, and
34

35 (2) mail certified copies of the judgment to the reviewing court and the
36 Attorney General.
37

38 **(d) Clerk’s transcript**
39

40 The clerk’s transcript must contain:
41

42 (1) the petition and notice of hearing;

- (2) all court minutes;
- (3) any application, motion, or notice or motion, with supporting and opposing memoranda and attachments;
- (4) any report or other document submitted to the court;
- (5) any transcript of a proceeding pertaining to the case;
- (6) the statement of decision; and
- (7) the judgment or order appealed from.

(e) Reporter's transcript

The reporter's transcript must contain all oral proceedings in the superior court, including:

- (1) all proceedings at the hearing on the petition, with opening statements and closing arguments;
- (2) all proceedings on motions;
- (3) any comments on the evidence by the court; and
- (4) any oral opinion or oral statement of decision.

(f) Preparing and sending transcripts

- (1) The clerk and reporter must prepare an original and two copies of each transcript.
- (2) The transcripts must be corrected, certified, and transmitted as provided in rule 32.
- (3) Probate Code section 1963 governs the cost of preparing the record on appeal.

(g) Confidential material

- (1) Written reports of physicians, psychologists, and clinical social workers, and any other matter marked confidential by the court, may be inspected

only by court personnel, the parties and their counsel, and other persons designated by the court.

- (2) Material under (1) must be sent to the reviewing court in a sealed envelope marked, “Confidential—May Not Be Examined Without Court Order.”

(h) Counsel’s duties

- (1) To expedite certification of the record, the conservatee’s trial counsel must continue to represent the conservatee until the record is certified.
- (2) Trial counsel must ensure that the record has been duly prepared, must review it for errors or omissions, and must request any necessary corrections or additions.
- (3) When the record is certified, trial counsel must promptly deliver it to the conservatee’s appellate counsel.
- (4) Appellate counsel may request further corrections of or additions to the record in either the trial court or the reviewing court.

(i) Appointment of appellate counsel

If the conservatee has not retained appellate counsel, the reviewing court must appoint such counsel.

Advisory Committee Comment

Revised rule 39.1 is former rule 39.8. It implements Probate Code section 1963, subdivision (b).

Subdivision (a). Former rule 39.8(a) stated that it governed appeals from judgments “*authorizing the appointment of a limited conservator to consent to sterilization*” of a developmentally disabled adult conservatee. (Italics added.) But the statutes address instead appeals from judgments “*authorizing the conservator of a person to consent to the sterilization*” (Prob. Code, § 1962(b), italics added) and do not restrict the power to consent to a *limited* conservator (*id.*, §1960). To conform to the statutes, revised rule 39.1(a) provides simply that it governs appeals from judgments “authorizing a conservator to consent” to sterilization.

Subdivision (b). Former rule 39.8(c) stated that an appeal is deemed automatically taken from a judgment authorizing consent to sterilization upon *entry* of that judgment. But the statute provides instead that the appeal is automatically taken when the judgment is *rendered*. (Prob. Code, § 1962(b).) Revised rule 39.1(b) conforms to the statute.

1 **Rule 39.2. Appeal from order granting relief by writ of habeas corpus**

2
3 **(a) Application**

4
5 Except as otherwise provided in this rule, rules 30–33.3 govern appeals under
6 Penal Code section 1506 or 1507 from orders granting all or part of the relief
7 sought in a petition for writ of habeas corpus.
8

9 **(b) Contents of record**

10
11 In an appeal under this rule, the record must contain:

- 12
13 (1) the petition, the return, and the traverse;
14
15 (2) the order to show cause;
16
17 (3) all court minutes;
18
19 (4) all documents and exhibits submitted to the court;
20
21 (5) the reporter’s transcript of any oral proceedings;
22
23 (6) any written opinion of the court;
24
25 (7) the order appealed from; and
26
27 (8) the notice of appeal.
28

29
30 **Advisory Committee Comment**

31 Revised rule 39.2 is former rule 50.

32
33 **Subdivision (b).** Paragraphs (2), (3), and (6) of revised rule 39.2(b) fill gaps; they are derived
34 from revised rule 31(b)(3) and (7).
35

36
37 **Rule 49. Writ of supersedeas**

38
39 **(a) Petition**

- 40
41 (1) An appellant seeking a stay of the enforcement of a judgment or order
42 pending appeal may serve and file a petition for writ of supersedeas in the
43 reviewing court.

- (2) The petition must bear the same title as the appeal and, if known, the appeal's docket number.
- (3) The petition must contain a statement of the necessity for the writ and points and authorities.
- (4) If the record has not been filed in the reviewing court, the petition must contain:
 - (A) the judgment or order, showing its date of entry;
 - (B) the notice of appeal, showing its date of filing;
 - (C) a statement of the case, including a summary of the material facts.
- (5) The petition must be verified.

(b) Opposition

- (1) Unless otherwise ordered, any opposition must be served and filed within 15 days after the petition is filed.
- (2) An opposition must contain points and authorities and a statement of any material facts not included in the petition.
- (3) The court may not issue a writ of supersedeas until the respondent has had the opportunity to file an opposition.

(c) Temporary stay

- (1) The petition may include a request for a temporary stay under rule 49.5 pending the ruling on the petition.
- (2) Except when the custody of a minor is involved, a separately filed request for a temporary stay need not be served on the respondent.

(d) Issuing the writ

- (1) The court may issue the writ on any conditions it deems just.
- (2) The court must hold a hearing before it may issue a writ staying an order awarding or changing the custody of a minor.

- 1
2 (3) The court must notify the superior court under rule 56(j) of any writ or
3 temporary stay that it issues.
4
5
6

7 **Rule 49.5. Request for temporary stay**
8

9 **(a) Information on cover**
10

11 If a petition for original writ, petition for review, or any other document
12 requests a temporary stay from a reviewing court, the cover of the document
13 must:
14

- 15 (1) prominently display the notice “STAY REQUESTED” and
16
17 (2) identify the nature and date of the proceeding or act sought to be stayed.
18

19 **(b) Additional information**
20

21 The following information must appear either on the cover or at the beginning
22 of the text:
23

- 24 (1) the trial court and department involved, and
25
26 (2) the name and telephone number of the trial judge whose order the request
27 seeks to stay.
28

29 **(c) Sanction**
30

31 If the request for stay does not comply with (a) and (b), the reviewing court
32 may decline to consider it.
33
34

35 **Advisory Committee Comment**

36 **Subdivisions (a) and (b).** Revised rule 49.5(a)(2) and (b) are substantive changes intended to
37 promote the intent of the rule by providing the reviewing courts with the information they need to process
38 stay requests as expeditiously as possible.
39
40

41 **CHAPTER II. RULES ON ORIGINAL PROCEEDINGS IN REVIEWING**
42 **COURTS**
43

1 **Rule 56. Original proceedings**

2
3 **(a) Application**

4
5 (1) This rule governs petitions to the reviewing court for writs of mandate,
6 prohibition, or certiorari, or other writs within its original jurisdiction. In
7 all respects not provided for in this rule, rule 14 applies.
8

9 (2) This rule does not apply to petitions for writs of habeas corpus, except as
10 provided in rule 60, or to petitions for review under rules 57–59.
11

12 **(b) Petition**

13
14 (1) If the petition could have been filed first in a lower court, it must explain
15 why the reviewing court should issue the writ as an original matter.
16

17 (2) If the petition names as respondent a judge, court, board, or other officer
18 acting in a public capacity, it must disclose the name of any real party in
19 interest.
20

21 (3) If the petition seeks review of trial court proceedings that are also the
22 subject of a pending appeal, the notice “Related Appeal Pending” must
23 appear on the cover of the petition and the first paragraph of the petition
24 must state:
25

26 (A) the appeal’s title, trial court docket number, and any reviewing court
27 docket number, and,
28

29 (B) if the petition is filed under Penal Code section 1238.5, the date the
30 notice of appeal was filed.
31

32 (4) The petition must be verified.
33

34 (5) The petition must be accompanied by points and authorities.
35

36 (6) A party seeking writ relief may not do so by filing a document purporting
37 to join in a writ petition filed or to be filed by another party.
38

39 (7) If the petition requests a temporary stay, it must comply with rule 49.5.
40

41 **(c) Contents of supporting documents**
42

- 1 (1) A petition that seeks review of a trial court ruling must be accompanied
2 by an adequate record, including:
3
4 (A) the ruling from which the petition seeks relief;
5
6 (B) all documents and exhibits submitted to the court supporting and
7 opposing the petitioner's position;
8
9 (C) any other documents or portions of documents submitted to the court
10 that are necessary for a complete understanding of the case and the
11 ruling under review; and
12
13 (D) a reporter's transcript of the oral proceedings that resulted in the
14 ruling under review.
15
16 (2) If a transcript under (1)(D) is unavailable, the record must include a
17 declaration by counsel:
18
19 (A) explaining why the transcript is unavailable and fairly summarizing
20 the proceedings, including counsels' arguments and any statement
21 by the court supporting its ruling; or
22
23 (B) stating that the transcript has been ordered, the date it was ordered,
24 and the date it is expected to be filed, which must be a date prior to
25 any action requested of the reviewing court other than issuance of a
26 temporary stay supported by other parts of the record.
27
28 (3) A declaration under (2) may omit a full summary of the proceedings if
29 part of the relief sought is an order to prepare a transcript for the use of an
30 indigent criminal defendant in support of the petition and the declaration
31 demonstrates the petitioner's need for and entitlement to the transcript.
32
33 (4) In exigent circumstances, the petition may be filed without the documents
34 required by (1)(A)–(C) if counsel files a declaration that explains the
35 urgency and the circumstances making the documents unavailable and
36 fairly summarizes their substance.
37
38 (5) If the petitioner does not submit the required record or explanations or
39 does not present facts sufficient to excuse the failure to submit them, the
40 court may summarily deny a stay request, the petition, or both.
41

42 **(d) Form of supporting documents**
43

- (1) Documents submitted under (c) must comply with the following requirements:
 - (A) They must be bound together at the end of the petition or in separate volumes not exceeding 300 pages each. The pages must be consecutively numbered.
 - (B) They must be index-tabbed by number or letter.
 - (C) They must begin with a table of contents listing each document by its title and its index-tab number or letter. If a document has attachments, the table of contents must give the title of each attachment and a brief description of its contents.
- (2) The clerk must file any petition or supporting document not complying with (1), but the court may notify the petitioner that it may strike or summarily deny the petition if the petition or document is not brought into compliance within a stated reasonable time.
- (3) Unless the court orders otherwise, the petitioner must file only one set of supporting documents in the reviewing court.

(e) Sealed records

Rule 12.5 applies if a party seeks to lodge or file a sealed record or to unseal a record.

(f) Service

- (1) If the respondent is the superior court or a judge of that court, the petition and one set of supporting documents must be served on any named real party in interest but only the petition must be served on the respondent.
- (2) If the respondent is not the superior court or a judge of that court, both the petition and one set of supporting documents must be served on the respondent and on any named real party in interest
- (3) The proof of service must give the telephone number of each attorney served and name each party represented by each attorney.
- (4) The petition must also be served on a public officer or agency when required by statute or rule 44.5.

1 (5) The clerk must file the petition even if its proof of service is defective, but
2 if the petitioner fails to file a corrected proof of service within five days
3 after the clerk gives notice of the defect the court may strike the petition
4 or impose a lesser sanction.
5

6 (6) The court may allow the petition to be filed without proof of service.
7

8 **(g) Preliminary opposition**
9

10 (1) Within five days after the petition is filed, the respondent or any real party
11 in interest, separately or jointly, may serve and file an opposition.
12

13 (2) An opposition must contain points and authorities and a statement of any
14 material fact not included in the petition.
15

16 (3) Within five days after an opposition is filed, the petitioner may serve and
17 file a reply.
18

19 (3) Without requesting opposition or waiting for a reply, the court may deny
20 the petition, issue an alternative writ or order to show cause, or notify the
21 parties that it is considering issuing a peremptory writ in the first instance.
22

23 **(h) Return or opposition; reply**
24

25 (1) If the court issues an alternative writ or order to show cause, the
26 respondent or any real party in interest, separately or jointly, may serve
27 and file a return by demurrer, verified answer, or both. If the court
28 notifies the parties that it is considering issuing a peremptory writ in the
29 first instance, the respondent or any real party in interest may serve and
30 file an opposition.
31

32 (2) Unless the court orders otherwise, the return or opposition must be served
33 and filed within 30 days after the court issues the alternative writ or order
34 to show cause or notifies the parties that it is considering issuing a
35 peremptory writ in the first instance.
36

37 (3) Unless the court orders otherwise, the petitioner may serve and file a
38 reply within 15 days after the return or opposition is filed.
39

40 (4) If the return is by demurrer alone and the demurrer is not sustained, the
41 court may issue the peremptory writ without granting leave to answer.
42

43 **(i) Attorney General's amicus curiae brief**

- (1) If the court issues an alternative writ or order to show cause, the Attorney General may file an amicus curiae brief without the permission of the Chief Justice or presiding justice, unless the brief is submitted on behalf of another state officer or agency.
- (2) The Attorney General must serve and file the brief within 14 days after the return is filed or, if no return is filed, the date it was due.
- (3) The brief must provide the information required by rule 13(c)(2) and comply with rule 13(c)(4).
- (4) Any party may serve and file an answer within 14 days after the brief is filed.

(j) Notice to trial court

- (1) If a writ or order issues directed to any judge, court, board or other officer, the reviewing court clerk must promptly send a certified copy of the writ or order to the person or entity to whom it is addressed.
- (2) If the writ or order stays or prohibits proceedings set to occur within seven days or requires action within seven days—or in any other urgent situation—the reviewing court clerk must make a reasonable effort to notify the clerk of the respondent court by telephone, who must then notify the judge or officer most directly concerned.
- (3) The clerk need not give telephonic notice of the summary denial of a writ, whether or not a stay previously issued.

(k) Responsive pleading under Code of Civil Procedure section 418.10

If the Court of Appeal denies a petition for writ of mandate brought under Code of Civil Procedure section 418.10(c) and the Supreme Court denies review of the Court of Appeal’s decision, the time to file a responsive pleading in the trial court is extended until 10 days after the Supreme Court files its order denying review.

(l) Costs

- (1) Except in a criminal or juvenile case, the prevailing party in an original proceeding is entitled to costs if the court resolves the proceeding by

1 written opinion after issuing an alternative writ, order to show cause, or
2 peremptory writ in the first instance.

3
4 (2) In the interests of justice the court may award or deny costs as it deems
5 proper.

6
7 (3) The opinion or order resolving the proceeding must specify the award or
8 denial of costs.

9
10 (4) Rule 27(b)–(d) govern the procedure for recovering costs under this rule.
11

12
13 **Advisory Committee Comment**

14 Revised rule 56 combines the provisions of former rules 56 and 56.4.

15
16 **Subdivision (a).** The exception clause in revised rule 56(a)(2) is an amendment to former rule 56
17 that will take effect on January 1, 2004. It is inserted here for completeness.

18
19 **Subdivision (b).** Revised rule 56(b)(6) is new. Under former rule 56, parties sought from time
20 to time to obtain writ relief by the device of filing a brief “joinder” purporting to join in a writ petition
21 filed—or not yet filed but expected to be filed—by another party. Although the former rule did not
22 expressly prohibit the practice, some reviewing courts rejected such “joinders” because they evaded the
23 formal requirements for writ relief prescribed by current rule 56(a), including the requirement that the
24 petition be verified. For that reason, revised rule 56(b)(6) expressly prohibits the practice.
25

26 **Subdivision (d).** Revised rule 56(d)(3) fills a gap by specifying that a petitioner must file only
27 one set of supporting documents in the reviewing court. The revised rule, however, recognizes the courts’
28 practice of requiring additional sets of such documents when needed.
29

30 **Subdivision (f).** Revised rule 56 (f)(1) makes it clear that the required supporting documents
31 must not be served on the respondent if the latter, as is commonly the case, is the superior court or a judge
32 of that court.
33

34 Revised rule 56(f)(4) is an amendment to former rule 56 that will take effect on January 1, 2004.
35 It is inserted here for completeness.
36

37 **Subdivision (g).** Consistently with practice, revised rule 56 draws a distinction between a
38 “preliminary opposition,” which the respondent or a real party in interest may file before the court takes
39 any action on the petition (*id.*, subd. (g)(1)), and a more formal “opposition,” which the respondent or a
40 real party in interest may file if the court notifies the parties that it is considering issuing a peremptory
41 writ in the first instance (*id.*, subd. (h)(1)).
42

43 Revised rule 56(g)(3) is new. Former rule 56 did not expressly authorize petitioners to reply to
44 preliminary oppositions, but the reviewing courts often permitted such replies. In a substantive change
45 intended to formalize this practice, revised rule 56(g)(3) provides that a petitioner may serve and file a
46 reply within five days after an opposition is filed. To permit prompt action in urgent cases, however, the
47 provision recognizes that the reviewing court may act on the petition without waiting for a reply.
48

1 The several references in revised rule 56 to the power of the court to issue a peremptory writ in
2 the first instance after notifying the parties that it is considering doing so (id., subds. (g)–(h)) implement
3 the rule of *Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171. The change is not substantive.
4

5 **Subdivision (h).** Former rule 56(f) required the return to be filed “at least five days before the
6 date set for hearing.” Because “hearing” in this context meant oral argument before the reviewing court,
7 the provision raised administrative difficulties: for example, the five-day limit allowed little or no time for
8 the petitioner reply to the return or for the court to prepare for oral argument. In a substantive change
9 intended to alleviate those difficulties, revised rule 56(h)(2) requires instead that the return or opposition
10 be served and filed within 30 days after the court issues the alternative writ or order to show cause or
11 notifies the parties that it is considering issuing a peremptory writ in the first instance. To permit prompt
12 action in urgent cases, however, the provision recognizes that the reviewing court may order otherwise.
13

14 Revised subdivision 56(h)(3) is new. In a substantive change, it formalizes the common practice
15 of permitting petitioners to file replies to returns and specifies that such a reply must be served and filed
16 within 15 days after the return is filed. To permit prompt action in urgent cases, however, the provision
17 recognizes that the reviewing court may order otherwise.
18

19 **Subdivision (l).** Revised rule 56(l) is former rule 56.4.
20
21

22 **Rule 57. Review of Workers’ Compensation Appeals Board cases**

23

24 **(a) Petition**

25

- 26 (1) A petition to review an order, award, or decision of the Workers’
27 Compensation Appeals Board must include:

28 (A) the order, award, or decision to be reviewed, and
29

30 (B) the referee’s findings and decision, including the referee’s report and
31 recommendation on the petition for reconsideration.
32

- 33 (2) If the petition claims that the board’s ruling is not supported by
34 substantial evidence, it must fairly state all the material evidence relevant
35 to the ruling.
36

- 37 (3) The petitioner must serve two copies of the petition on the board and one
38 copy on each party who appeared in the action and whose interest is
39 adverse to the petitioner.
40

41 **(b) Answer and briefs**

42

- 43 (1) Within 25 days after the petition is filed, the board or any real party in
44 interest may serve and file, separately or jointly, an answer and brief.
45
46

- 1 (2) Within 15 days after an answer is filed, the petitioner may serve and file a
2 reply.
3
4 (3) An answer or a reply must also be served on all adverse parties.
5
6

7 **Advisory Committee Comment**

8 **Subdivision (b).** Former rule 57(b) measured the time to file an answer (or reply) from the date
9 that the petition (or answer) was *served*, but the actual date of service was not always clear. In a
10 substantive change intended to assist the reviewing courts, revised rule 57(b) instead measures the time to
11 file an answer (or reply) from the date that the petition (or answer) is *filed*. In each case the revised rule
12 allows five extra days for mailing.
13
14

15 **Rule 58. Review of Public Utilities Commission cases**
16

17 **(a) Petition**
18

- 19 (1) A petition to review an order or decision of the Public Utilities
20 Commission must be verified and must be served on the commission and
21 any real parties in interest.
22
23 (2) A real party in interest is one who was a party of record to the proceeding
24 and took a position adverse to the petitioner.
25

26 **(b) Answer and briefs**
27

- 28 (1) Within 35 days after service of the petition, the commission or any real
29 party in interest may serve and file, separately or jointly, an answer and
30 brief.
31
32 (2) Within 25 days after service of an answer, the petitioner may serve and
33 file a reply.
34
35

36 **Advisory Committee Comment**

37 **Subdivision (b).** Former rule 58(b) measured the time to file an answer (or reply) from the date
38 that the petition (or answer) was *served*, but the actual date of service was not always clear. In a
39 substantive change intended to assist the reviewing courts, revised rule 58(b) instead measures the time to
40 file an answer (or reply) from the date that the petition (or answer) is *filed*. In each case the revised rule
41 allows five extra days for mailing.
42
43

1 **Rule 59. Review of Agricultural Labor Relations Board and Public Employment**
2 **Relations Board cases**

3
4 **(a) Petition**
5

6 (1) A petition to review an order or decision of the Agricultural Labor
7 Relations Board or the Public Employment Relations Board must be
8 served on the Executive Secretary of the Agricultural Labor Relations
9 Board or the General Counsel of the Public Employment Relations Board
10 in Sacramento and on any real parties in interest.
11

12 (2) A real party in interest is a party of record to the proceeding.
13

14 (3) The petition must be verified.
15

16 **(b) Record**
17

18 Within the time permitted by Labor Code section 1160.8 for the Agricultural
19 Labor Relations Board or Government Code sections 3520(c), 3542(c), or
20 3564(c) for the Public Employment Relations Board, the board must file the
21 certified record of the proceedings and must simultaneously file and serve on
22 all parties an index to that record.
23

24 **(c) Briefs**
25

26 (1) The petitioner must serve and file its brief within 35 days after service of
27 the index.
28

29 (2) Within 35 days after service of the petitioner's brief, the board must—and
30 any real party in interest may—serve and file a respondent's brief.
31

32 (3) Within 25 days after service of the respondent's brief, the petitioner may
33 serve and file a reply brief.
34

35 **Advisory Committee Comment**
36

37 **Subdivision (a).** Former rule 59(a) provided that a petition to review an order or decision of the
38 Public Employment Relations Board must be served on the "Executive Director" of that board. That
39 position, however, has been abolished; accordingly, revised rule 59(a)(1) provides instead that service
40 must be made on the board's General Counsel.
41

42 Former rule 59(a) specified that the petition was not required to be verified if "the petitioner was
43 exempted from verifying pleadings by Code of Civil Procedure section 446," and that the petition was

1 required to be served “as provided in Code of Civil Procedure sections 1010–1015.” Revised rule 59
2 deletes the quoted provisions as unnecessary; the cited statutes apply to *all* the rules of court. The change
3 is not substantive.
4

5 **Subdivision (c).** Former rule 59(c)–(d) measured the time to file the petitioner’s brief, a
6 responding brief, or a reply brief from the date that the index, the petitioner’s brief, or the responding
7 brief was *served*. The actual date of service, however, was not always clear. In a substantive change
8 intended to assist the reviewing courts, revised rule 59(c) instead measures the time to file the petitioner’s
9 brief, a responding brief, or a reply brief from the date that the index, the petitioner’s brief, or the
10 responding brief is *filed*. In each case the revised rule allows five extra days for mailing.
11
12

13 **Rule 60. Petition for writ of habeas corpus**

14 **(a) Required Judicial Council form**

- 15
16
17 (1) Except when filed by an attorney, a petition to a reviewing court for writ
18 of habeas corpus—or other writ within its original jurisdiction—that
19 seeks release from or modification of the conditions of custody of a
20 person confined in a state or local penal institution, hospital, narcotics
21 treatment facility, or other institution, must be filed on Judicial Council
22 form MC-275 (*Petition for writ of habeas corpus*). A petition on form
23 MC-275 need not comply with rule 56.
24
25 (2) For good cause the court may permit the filing of a petition that is not on
26 form MC-275.
27

28 **(b) Petition filed by attorney**

29
30 If the petition is filed by an attorney:

- 31
32 (1) The petition need not be filed on form MC-275 but must contain the
33 information requested in that form and must comply with rule 14(a)–(b).
34
35 (2) Any memorandum of points and authorities accompanying the petition
36 must comply with rule 14(a)–(b).
37
38 (3) The petition must be accompanied by a copy of any petition—excluding
39 exhibits—previously filed in any lower state court or any federal court
40 pertaining to the same judgment and petitioner. If such documents have
41 previously been filed in the Supreme Court, the petition need only so
42 state.
43

1 (4) Any supporting documents accompanying the petition must comply with
2 rule 56(d).
3

4 (5) The clerk must file an attorney's petition that does not comply with (1)–
5 (4) if it otherwise complies with the rules of court, but if the attorney does
6 not file a corrected petition within five days after the clerk gives notice of
7 the defect the court may strike the petition or impose a lesser sanction.
8

9 **(c) Record**
10

11 Before ruling on the petition, the court may order the custodian of any relevant
12 record to file the record or a certified copy with the court.
13

14 **(d) Informal response**
15

16 (1) The court may request an informal response from the respondent, real
17 party in interest, or an interested person. The court must send a copy of
18 any request to the petitioner.
19

20 (2) The response must be in writing and must be served and filed within 15
21 days or as the court specifies.
22

23 (3) If a response is filed, the court must notify the petitioner that a reply may
24 be served and filed within 15 days or as the court specifies. The court
25 may not deny the petition until that time has expired.
26

27 **(e) Petition unrelated to appellate district**
28

29 (1) A Court of Appeal may deny without prejudice a petition for writ of
30 habeas corpus that is based primarily on facts occurring outside the
31 court's appellate district, including petitions that question:
32

33 (A) the validity of judgments or orders of trial courts located outside the
34 district, or
35

36 (B) the conditions of confinement or conduct of correctional officials
37 outside the district.
38

39 (2) If the court denies a petition solely under (1), the order of denial must
40 state that it is the basis of the denial and must identify the appropriate
41 court in which to file the petition.
42
43

1

2

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